



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 02-278, 05-338; DA 18-1159]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991: Regarding the Commission's Opt-Out Notice Requirement for Faxes Sent with the Recipient's Prior Express Permission

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission, via the Consumer and Governmental Affairs Bureau (CGB or Bureau), amends its rules by eliminating the rule that requires an opt-out notice on fax advertisements sent with the recipient's prior express permission or consent. This rule was declared unlawful by the United States Court of Appeals for the D.C. Circuit and therefore its elimination is warranted to ensure uniform and consistent application of the rules.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Rebecca A. Hirselj, Consumer Policy Division, CGB, at (202) 418-7603, email: Rebecca.Hirselj@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order (*Order*), in CG Docket Nos. 02-278, 05-338; DA 18-1159, adopted on November 14, 2018 and released on November 14, 2018. The full text of the *Order* is available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The full text of the *Order* and any subsequently filed documents in this matter may also be found by searching ECFS at: <http://apps.fcc.gov/ecfs/> (insert CG Docket Nos. 02-278 and/or 05-338 into the Proceeding block). To request materials in accessible formats for people with

disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call CGB at (202) 418-0530 (voice), (202) 418-0432 (TTY) or (844) 432-2275 (videophone).

FINAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

The *Order* does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Pub. L. 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, *see* 44 U.S.C. 3506(c)(4).

CONGRESSIONAL REVIEW ACT

The Commission sent a copy of *Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

SYNOPSIS

1. In the *Order*, the Bureau eliminates the Commission's 2006 Solicited Fax Rule requiring opt-out notices on faxes sent with the recipients' prior permission or consent. This action is taken in response to the decision of the United States Court of Appeals for the D.C. Circuit finding that the rule is unlawful to the extent that it requires opt out notices on solicited faxes. The Bureau also dismissed as moot ten pending petitions for retroactive waiver of the rule and two petitions for reconsideration of orders enforcing the rule.

2. In 1991, Congress enacted the Telephone Consumer Protection Act (TCPA). In relevant part, the TCPA prohibits the use of any telephone facsimile (fax) machine, computer, or other device to send an unsolicited advertisement to a telephone fax machine. In 1992, the Commission adopted rules implementing the TCPA, including restrictions on the transmission of unsolicited fax ads.

3. In 2005, Congress enacted the Junk Fax Prevention Act, which amended the fax advertising provisions of the TCPA. Among other things, the law required the sender of an unsolicited fax ad to provide specified notice and contact information on the fax that allows recipients to opt out of any future fax transmission from the sender and specified the circumstances under which a request to opt out complies with the Act.

4. In 2006, the Commission adopted the Junk Fax Order, published at 71 FR 25967, May 3, 2006, amending the rules concerning fax transmissions as required by the Junk Fax Prevention Act. As part of the Junk Fax Order, the Commission adopted the 2006 Solicited Fax Rule requiring that fax advertisements sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice.

Discussion

5. The Bureau eliminates the Commission's 2006 rule requiring opt-out notices on fax advertisements sent with the recipient's prior express permission or consent. Specifically, in light of the court's decision that the rule is unlawful, § 64.1200(a)(4)(iv) of the Commission's rules is eliminated from Title 47 of the Code of Federal Regulations. The Bureau finds good cause to eliminate the rule without notice and comment because the rule has been vacated by the court in an order that has become final and nonreviewable. As such, seeking notice and comment before implementing the court's non-discretionary mandate would serve no purpose and is thus contrary to the public interest.

6. The Bureau also dismisses as moot ten pending petitions for retroactive waiver as well as the two pending petitions for reconsideration. The Court of Appeals for the D.C. Circuit declared unlawful and vacated the 2006 Solicited Fax Rule and the Bureau accordingly eliminated the rule as described above. Therefore, the Bureau finds no need to consider the remaining pending petitions seeking temporary waiver of the rule or seeking reconsideration of the Commission's application of the rule.

Ordering Clauses

7. Pursuant to sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j), 227, and the authority delegated in §§ 0.141 and 0.361 of the Commission's rules, 47 CFR 0.141, 0.361, that the *Order* is adopted and that § 64.1200 of the Commission's rules, 47 CFR 64.1200 is amended.

8. Pursuant to sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j), and 227, and § 1.3 of the Commission's rules, 47 CFR 1.3, and the authority

delegated in §§ 0.141 and 0.361 of the Commission's rules, 47 CFR 0.141, 0.361, that the petitions for retroactive waiver of § 64.1200(a)(4)(iv) of the Commission's rules, 47 CFR 64.1200(a)(4)(iv), filed by Safemark Systems, LP, Cynosure, Inc., United Auto Credit Corporation, Brigadoon Fitness Inc. and Brigadoon Financial Inc., Renue Systems Development Corp., Inc., et al., Chester Limited, Inc., Foot Levelers, Inc., M3 USA Corporation, Lane Labs-USA, Inc, and Getaway Seminars, Inc. are dismissed as moot.

9. Pursuant to sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j), and 227, and § 1.3 of the Commission's rules, 47 CFR 1.3, and the authority delegated in §§ 0.141 and 0.361 of the rules, 47 CFR 0.141, 0.361, that the petitions for reconsideration filed by Fetch, Inc., d/b/a Petplan and Ohio National Mutual, Inc., are dismissed as moot.

10. CGB's Reference Information Center, shall send a copy of the *Order*, including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telecommunications, Telephone, Facsimile.
Federal Communications Commission.

Daniel Margolis,
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Consumer & Governmental Affairs Bureau

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401-1473, unless otherwise noted.

§ 64.1200 [Amended]

2. In § 64.1200:
 - a. Remove paragraphs (a)(4)(iv); and
 - b. Redesignate paragraphs (a)(4)(v), (vi), and (vii) as paragraphs (a)(4)(iv), (v), and (vi), respectively.

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